

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC
COMPANY, a California Corporation, for a
Permit to Construct the Atlantic-Del Mar
Reinforcement Project Pursuant to
General Order 131-D. (U 39 E)

Application 01-07-004
(Filed July 9, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
NOTICE OF INTENT TO SEEK COMPENSATION**

On December 19, 2001, Kent and Anne Dazey (the Dazeys) filed a Notice of Intent (NOI) to claim compensation for their participation in this proceeding. The Dazeys' NOI is prepared and submitted pursuant to Pub. Util. Code § 1801 et seq. and Rule 76.71 et seq. of the Commission's Rules of Practice and Procedure.¹ Based on that showing, I could not conclude whether the Dazeys met the definition of a customer or the significant financial hardship test, and therefore, could not determine eligibility for compensation in the proceeding. I issued a ruling on February 4, 2002 allowing the Dazeys to amend their showing

¹ Unless otherwise indicated, all subsequent citations to code sections refer to the Public Utilities Code, and all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

to allow me to make that determination. The Dazeys complied and the Docket Office filed the amended notice on February 25, 2002.²

As required by § 1804(b)(1), and in consultation with the Assigned Commissioner, I preliminarily rule that the Dazeys are customers eligible for an award of compensation, that they have met the significant financial hardship test, and are eligible for compensation in this proceeding.

1. Timeliness

Section 1804(a)(1) provides that an NOI must be filed and served within 30 days after the prehearing conference (PHC), unless no PHC is held or the proceeding is expected to be completed in less than 30 days. A PHC in this case was held on October 25, 2001. As discussed in the February 4, 2002 ruling, there was no prejudice to parties of the 25-day delay in filing the Dazeys' initial NOI. The Dazeys complied with the February 4, 2002 ruling to amend their NOI by February 20, 2002, but technical filing issues prevented the amended NOI from being filed until February 25, 2002. This delay had no impact on the schedule for this proceeding and therefore, we will treat the amended NOI as having been timely filed.

2. Nature and Extent of Planned Participation; Estimate of Compensation

Section 1804(a)(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

² The Dazeys submitted their amended notice by the February 20, 2002 deadline specified in the February 4, 2002 ruling but because certain modifications were required, it was filed after the due date. I will treat the amended NOI as timely.

2.1 Planned Participation

In my February 4, 2002 ruling, I preliminarily found that the Dazeys may represent customer interests that will be underrepresented if they are unable to participate effectively. This ruling continues to stand. However, because there are groups with overlapping interests, I cautioned the Dazeys that compensation will not be paid for duplicative efforts. Merely appearing and stating positions will not assure compensation. I encourage the Dazeys to work actively with the other parties to agree among themselves, on issues that they will each address, in order to avoid duplication of effort should preparation of testimony or evidentiary hearings ultimately be required.

2.2 Estimate of Compensation

The Dazeys estimate a total projected budget of \$54,500 as follows:

Representative	Estimated Hours	Hourly Rate	Estimated Cost
Environmental Attorney	50	\$250	\$12,500
Environmental Attorney	45	\$300	\$13,500
Safety Engineer	35	\$200	\$7,000
Safety Engineer	20	\$300	\$6,000
Railroad Engineer	35	\$200	\$7,000
Railroad Engineer	20	\$300	\$6,000
Estimated expenses			\$2,500
	TOTAL		\$54,500

The Dazeys do not justify the requested hourly rates and must address the reasonableness of the requested rates in their ultimate Request for Compensation. The itemization prepared by the Dazeys at this time fulfills the requirements of § 1804(a)(2)(A)(ii). This ruling in no way ensures compensation.

The Dazeys are cautioned that they should carefully document the number of hours and hourly fees for counsel and expert witnesses and carefully allocate such expenses to specific issues pursued in this and the related cases. They should also review Commission orders and, in preparing their compensation request, take into account the Commission's practices for reducing hourly rates and hours claimed, e.g., for travel time and time spent on the compensation request itself.

3. Eligibility

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a "customer" and that participation without compensation would pose a significant financial hardship.

3.1 Customer Status

Section 1802(b) defines the term "customer" as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or an organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer and, if it is a group or an organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.*, at pp. 30-32; *see, also*, fn. 13-16.) Further, a group or an organization should indicate

the percentage of its membership comprised of residential ratepayers. (*See* D.98-04-059, *mimeo.*, at pp. 83 and 88.)

The Dazeys have identified themselves as a Category 1 customer. A Category 1 customer is an actual customer who represents more than his own narrow self-interest. The Dazeys state that their interest in this proceeding involves safety issues for the residents living near the proposed project, not just their narrow self-interest. The Dazeys' amended showing is adequate to establish their status as a Category 1 customer.

3.2 Significant Financial Hardship

Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation. Under § 1804(a)(2)(B), this showing may be made in the NOI, or alternatively, deferred until the request for compensation is filed.

Because the Dazeys seek to participate as a Category 1 customer, they must demonstrate that undue financial hardship will occur as a result of their participation here. (*See* Section 1802(g).) D.98-04-059, *slip op.* at p. 36, requires participants seeking a finding of significant financial hardship to disclose their finances to the Commission, under appropriate protective order. As described in D.98-04-059, this means that Category 1 customers must disclose their gross and net monthly income, monthly expenses, cash and assets, including equity in real estate. Subsequent rulings have determined that it is reasonable to exclude the equity of a participant's personal residence from this disclosure.

The Dazeys submitted the required information under seal, along with a motion for a protective order for their personal financial information. By this ruling, I grant the motion for a protective order covering their personal financial information.

The Dazeys are residential customers whose individual interests in this proceeding are small relative to the costs of participation and the cost of their participation in Commission proceedings substantially outweighs the benefit to any individual resident of Rocklin. No economic benefit from participation inures because their interest in the proceeding is in maintaining the safety of their community. The Dazeys' expected costs of participation will include retention of an attorney and experts to study the safety and environmental impacts of the proposed project specifically to the Rocklin residents. Their participation benefits a wide range of customers.

In comparing the Dazeys' personal financial information to their projected costs to participate, we conclude that the Dazeys have satisfied the showing of significant financial hardship. A finding of significant financial hardship in no way, however, ensures compensation for the Dazeys (Section 1804(b)(2)).

IT IS RULED that:

1. The motion for a protective order for the personal financial information of Kent and Anne Dazey is granted.
2. Kent and Anne Dazey have met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and are found eligible for compensation in this proceeding. Kent and Anne Dazey are customers as that term is defined in § 1804(b) and are a self-appointed representative of at least some other consumers, customers, or subscribers of the utility.
3. Kent and Anne Dazey have fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of their planned participation and an itemized estimate of the compensation they expect to request.
4. A finding of eligibility in no way assures compensation.

5. Parties requesting compensation shall make every effort to reduce duplication of contribution.

Dated March 15, 2002, at San Francisco, California.

/s/ MICHELLE COOKE

Michelle Cooke
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notice of Intent to Seek Compensation on all parties of record in this proceeding or their attorneys of record.

Dated March 15, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.